IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
C.W.P. No. 19249 of 2006
DATE OF DECISION: 5.12.2006
***

The Chairman, CMC, CSD Canteen, NCC Group Headquarter.
..PETITIONER

VS.

Promila and another. ..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE J.S. NARANG.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- Mr. Arun Walia, Advocate
for the petitioner.
***

ARVIND KUMAR, J.

The petitioner-department is aggrieved with the award dated 13.3.2006, copy Annexure P-5 by virtue of which respondent No.1-workperson has been ordered to be re-instated with continuity of service and full back wages.

We have heard the learned counsel for the petitioner and have also carefully perused the paper-book as also the impugned award.

In the instant case, it goes undisputed that after the death of husband of respondent No.1, she was given appointment by the petitioner on 30th March 1998. Her appointment was made for a fixed period of one year and the trial period was of three months from the date of joining, extendable by another period of six months. She successfully completed her trial period. Thereafter, she was given various extensions from time to time up to 30th June 2002.

Learned counsel for the petitioner has argued that the engagement of work-person was purely contractual, for a fixed period and was not extended beyond 30.6.2002 considering her work and conduct while discharging the duties, which were not up to the mark and as such, the case falls within the exceptional clause (bb) of Section 2(oo) of the Industrial Disputes Act, 1947 (for short the Act) and does not amount to retrenchment.

We are not at all convinced with the contentions of learned counsel for the petitioner.

If the employer resists the claim of the workman and invokes Section 2(oo)(bb) of the Act, burden lies on the employer to show that

though the employee has worked for 240 days in twelve months prior to termination of his service, such termination of service cannot be treated as retrenchment because it is in accordance with the terms of a contract of employment or on account of non-renewal of the contract of employment. It has also to be shown by the employer that the workman had been employed for a specified work and the job which was being performed by the employee is no more required. Only a bona fide exercise of right by an employer to terminate the service in terms of the contract of employment or for non-renewal of the contract will be covered by clause (bb). If the Court finds that the exercise of rights by the employer is not bona fide or the employer has adopted the methodology of fixed term employment as a conduit or mechanism to frustrate the rights of the workman, the termination of the service will not be covered by the exception contained in clause (bb). Instead the action of the employer will have to be treated as an act of unfair labour practice, as specified in the Fifth Schedule of the Act. It has to be interpreted to limit it to the case where the work itself has been accomplished and the agreement of hiring for a specific period was genuine. If the work continues, the non-renewal of the contract has to be dubbed as mala fide. In the instant case, the work did not cease to exist on the date of termination of the services of the work-person. A bare perusal of the award shows that admittedly one Dilbagh had been retained and persons namely Rajinder Singh as well as Ramesh Dangi were also engaged on the said work after the exit of work-person. This shows that the work did not cease to exist and the job which was being performed by the work-person continued to the required by the employer. In this backdrop of the facts, it must be held that the employer has not exercised his right to terminate the service of the petitioner in good faith.

The main stress of learned counsel for the petitioner is that the work and conduct of the work-person was not satisfactory and there were many complaints against her as to her dealings. However, the impugned award shows that the said plea of unsatisfactory work and conduct was not sufficiently proved by the petitioner-department. The warning letters allegedly issued to the work-person on 5.4.2000, 23.6.2000 and 16.8.2000 were not cogently proved by the petitioner. Another anonymous complaint dated 16th May 2000 produced by the petitioner before the Labour Court as

Annexure N/RR4 was found not genuine being not signed by its author. It cannot be forgotten that it is fundamental rule of law that no decision be taken which will effect the right of any person without first being informed of the case and be given him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. However, in the instant case, it has not been shown as to whether the work-person was afforded any opportunity to explain her conduct or that any enquiry had been conducted against the work-person with regard to said warning letters and anonymous complaint. Since no opportunity was given, the action of the petitioner is certainly in violation of provisions of natural justice. Accordingly, the said documents were rightly not considered by the Labour Court. Further, the plea of unsatisfactory work and conduct of the petitioner was found false from the fact itself that she was given extensions on 1st April 2000 and 31st March 2001 with clear stipulations on each occasion that she has been given extension keeping in view the past satisfactory service so rendered by her. Had there been any authentic complaint against the work-person as to her working, in that eventuality, there must have no occasion for the petitioner-department to extend her services on various occasions upto the period of about two years after receipt of such complaint.

Admittedly, the work-person served the petitioner-department from 30.3.1998 to 30.6.2002. She had to her credit service of more than 240 days. There is no dispute to the fact that compliance of Section 25-F of the Act was not made prior to terminate the services of the work-person. As such, the work-person's plea of illegal termination from service finds favour of the Labour Court.

We find no infirmity in the impugned award of the Labour Court, which is just and reasoned. The petition is wholly without merit and the same is accordingly dismissed in limine.

(ARVIND KUMAR)
JUDGE

December 5,2006 **(J.S. NARANG)**
Jiten **JUDGE**